

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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INNOVATION VENTURES, LLC, LIVING  
ESSENTIALS, LLC, and INTERNATIONAL IP  
HOLDINGS, LLC

Plaintiffs,

-against-

ULTIMATE ONE DISTRIBUTING CORP., ET  
AL.

Defendants.

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: 12 Civ. 5354 (KAM)(RLM)  
:  
: **STIPULATION AND ORDER**  
: **RE: MIDWEST PARTIES**  
: **CONSENTING TO BAJA PARTIES**  
: **AMENDING ANSWER**  
:  
:  
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Defendants and cross-claimants Midwest Wholesale Distributors, Inc., Walid Jamil and Justin Shayota (“Midwest Parties”) and Defendants and Cross-Defendants Tradeway International, Inc. d/b/a Baja Exporting, Joseph Shayota, and Adriana Shayota (collectively, the “Baja Parties”), hereby stipulate and agree as follows:

WHEREAS on February 19, 2013, the Midwest Parties filed a cross-claim against the Baja Parties (and other parties who are not a party to this stipulation) for (1) Fraudulent Misrepresentation, (2) Innocent Misrepresentation, (3) Silent Fraud, (4) Civil Conspiracy, and (5) Express, Implied or Common Law Indemnity, and on April 5, 2013, before the Baja Parties had answered, the Midwest Parties filed a first amended cross-claim against the Baja Parties (and other parties who are not a party to this stipulation) for: (1) fraudulent misrepresentation, (2) Innocent Misrepresentation, (3) Silent Fraud, (4) Indemnification, and (5) Contribution;

WHEREAS on December 18, 2013, the Baja Parties filed an answer to the original cross-claim as opposed to the first amended cross-claim;

WHEREAS the Baja Defendants now seek to file an amended answer that responds to the Midwest Parties’ first amended cross-claim and to add two affirmative defenses to their answer, one for In Pari Delicto and one for Illegality, and the Midwest Parties have agreed to consent to

the Baja Parties filing an amended answer that responds to the Midwest Parties' first amended cross-claim and that adds two affirmative defenses as follows:

**FIRST AFFIRMATIVE DEFENSE**

**(In Pari Delicto)**

Baja Defendants allege that the Midwest Cross-Claimants' claims should be precluded based on the doctrine of In Pari Delicto

**SECOND AFFIRMATIVE DEFENSE**

**(Illegality)**

Baja Defendants allege that if the Midwest Cross-Claimants engaged in illegal conduct, as Plaintiffs allege in their operative complaint in this action, then the Midwest Cross-Claimants' claims should be precluded and damages barred as a result of engaging in such illegal conduct.

WHEREAS, amending the answer will not increase the scope of discovery and will not cause any delay in setting the trial for this matter.

WHEREAS, pursuant to Federal Rules of Civil Procedure, Rule 15(a), since it has been more than 20 days since they served their answer on the Midwest Parties, the Baja Parties may only amend their answer with written consent of the Midwest Parties or by leave of court;

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WHEREAS, by this stipulation, the Midwest Parties provide written consent for the Baja Parties to file an amended answer as described herein;

IT IS HEREBY ORDERED that the Baja Defendants may file an amended answer responding to the allegations set forth in the Midwest Parties' first amended cross-claim and adding the affirmative defenses of In Pari Delicto and Illegality within 15 days of the Court executing this stipulation.

Dated: February 7, 2014

**CONSENTED AND AGREED TO BY:**

PAESANO / AKKASIAN

SELTZER CAPLAN McMAHON VITEK  
A Law Corporation

By: /s/ Anthony Paesano  
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Inc., Walid Jamil and Justin Shayota*

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*Attorneys for Tradeway International, Inc.  
d/b/a Baja Exporting, Joseph Shayota, and  
Adriana Shayota*

IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

**CERTIFICATE OF SERVICE**

I hereby certify that on May 28, 2013, the foregoing document was filed with the Clerk of the Court and served in accordance with the Federal Rules of Civil Procedure, and/or the Eastern District's Local Rules, and/or the Eastern District's Rules on Electronic Service upon all counsel of record via the Court's Electronic Case Filing System.

Dated: February 10, 2014

/s/ David M. Greeley

Gregory A. Vega

David M. Greeley

Brian Ragen

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